

REMARKS

First, Applicant thanks the Examiner for discussing this case with Applicant's representatives. A Statement of Substance of Interview is enclosed.

Claims 1-7, 9, 10, 14 and 15 are all the claims pending in the application.

In summary, the Examiner maintains the previous rejections of the pending claims, and adds new arguments in the *Response to Arguments* section of the present Office Action on pages 13-14. Specifically, claims 1-3, 5-7, 9, 10, 14 and 15 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Nelson et al. (US Patent No. 5,568,641). Claims 1 and 4-6 remain rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Mitsui, Hitoshi (JP 2001117780 A), hereinafter referred to as Mitsui. Claims 1 and 4-6 remain rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Matsui et al. (JP 09138769 A). Claims 1-3, 5-7, 9 and 10 remain rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Takeo, Kazunori (JP 10105407 A), hereinafter referred to as Takeo. Finally, claim 4 remains rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Nelson and further in view of Kurihara, Nobumasa (JP 411328040 A), hereinafter referred to as Kurihara.

§102(b) Rejections (Nelson) - Claims 1-3, 5-7, 9, 10, 14, and 15

The Examiner rejects claims 1-3, 5-7, 9, 10, 14 and 15 for the reasons set forth on pages 2-6 of the present Office Action (which substantially repeat the arguments from the previous Office Action), and the Examiner repeats the arguments set forth in the Continuation Sheet attached to the Advisory Action dated October 19, 2005.

With respect to the claim rejections over Nelson, the Examiner alleges, in part:

As memory in computing device, e.g. network device, if a single memory or multiple memories are used is well known up to designer's decision. As Nelson actually uses a "decode" to perform "chip select" functions, multiple memory usage is obvious.

In response, Applicant submits that the use of two memories is not simply a matter of a designer's decision, as using two memories can be advantageous and should be given patentable weight. For example, the use of two separate memories would reduce the complicated functionality associated with a single memory that performs the same functions of two separate memories. Therefore, manufacturing costs may be reduced. At least based on the foregoing, the features of "a first memory for storing data necessary for operating the network device" and "a second memory for storing information transferred through the network" should be given patentable weight.

Further, the Examiner alleges:

Applicant alleges that Nelson does not teach "selecting either the first memory or the second memory". As pointed above, the "decode" is pointing to "chip select" memories. Further, claims 2 and 9 of Nelson point out the selecting of a first memory. Claims 8 and 11 of Nelson point out the selecting of a second memory. As pointed out above, if a single memory or multiple memories are used is well known up to designer's decision. This is also pointed in Nelson (column 3, lines 23-24). *See page 13 of Office Action.*

Applicant submits that even if, *arguendo*, the memory 10 could be a bank of separately addressable EEPROM devices (col. 3, lines 23-24), there is no teaching or suggestion that there would be two distinct memories: one for storing data necessary for operating the network device and the other for storing information transferred through the network. These specific features of claim 1 are not satisfied by Nelson.

At least based on the foregoing, Applicant submits that independent claim 1 is patentably distinguishable over Nelson. With respect to dependent claims 2, 3, 5, 6, 14, and 15, Applicant submits that these claims are patentable by virtue of their dependencies from independent claim 1.

Further, with respect to dependent claim 2, Applicant previously argued that Nelson clearly does not teach copying “the information stored in the second memory to the original area of the first memory,” as recited in claim 2. The Examiner does not respond to this specific argument with respect to claim 2. Accordingly, Applicant maintains this same argument.

Applicant submits that independent claims 7 and 9 are patentable at least based on reasons similar to those set forth above with respect to claim 1.

With respect to claim 10, in the previous Amendment, we maintained that Nelson does not disclose or suggest at least, “wherein the at least one failure is a failure in the network device which is checked during the erasing and storing steps.” In response to this argument, the Examiner alleges:

Applicant alleges that Nelson does not disclose that such checking occurs during the erasing and storing steps. A power failure and any disruptive event could happen during the erasing and storing steps. The Applicant points out the need to check during the erasing and storing steps. As it is well known that a system design needs to include faulty conditions as Nelson points out. Unless the faulty condition is totally unknown to the industry, it should be treated as well known. *See pages 13-14 of Office Action.*

In response, Applicant submits that the Examiner has yet again utilized his “well known” in the art argument to support a rejection. However, the Examiner has not demonstrated that the above-quoted feature of claim 10 is well known in the art; nor has the Examiner provided any

prior art references that support his assertions in this regard. Therefore, Applicant maintains the arguments as set forth above and in the previous Amendment with respect to claim 10.

At least based on the foregoing arguments, Applicant submits that claims 1-3, 5-7, 9, 10, 14 and 15 are patentably distinguishable over Nelson.

§102(a) Rejections (Mitsui) - Claims 1 and 4-6

With respect to the rejections of claims 1 and 4-6 over Mitsui, the Examiner alleges:

Applicant alleges that Mitsui does not mention “a second memory for storing information transferred through the network”, Mitsui’s abstract cites in “SOLUTION:” “In the case of download, an updating program is stored in a second flash PROM1...”. *See page 14 of Office Action.*

In response, we could maintain, as previously argued, that the abstract of Mitsui clearly does not satisfy each and every limitation of claim 1. The Examiner has not even demonstrated that Mitsui shows a network. That is, any download that occurs in Mitsui could be downloaded from another device that is directly connected to the subject device, via a cable. Thus, at least based on the foregoing, Applicant submits that claims 1 and 4-6 are patentable over Mitsui.

§102(b) Rejections (Matsui) - Claims 1, and 4-6

With respect to the claim rejections over Matsui, the Examiner alleges:

Matsui described a software delivery from server to a client, copy the old software in an original space. This indicates a first and second memory of software delivery operation, i.e. update and recovery.

In response, Applicant submits that copying old software into an original space does not correspond to the specific features set forth in claim 1. For example, Matsui does not satisfy the features of: 1) a first memory for storing data necessary for operating the network device, and 2) a second memory for storing information transferred through the network. Further, the abstract

of Matsui does not disclose the claimed controller and decoder of claim 1, and their respective claimed functions. Therefore, Applicant submits that claims 1 and 4-6 are patentably distinguishable over Matsui.

§102(b) Rejections (Takeo) - Claims 1-3, 5-7, 9, and 10

With respect to the claim rejections over Takeo, the Examiner alleges:

Takeo cites in “SOLUTION” “A central processing part downloads and operation program 7 from a high order control stations so as to store it in a operation memory 5...” and “... and transfers the operation program 8 which is preserved in a back up memory 6 to operation memory 5 of the central processing part 1 as against a storage part 2 when abnormality is detected...” This indicates a software download and stored in a memory other than just one memory. This download is not local.

Applicant maintains the previously submitted arguments with respect to the rejections of claims 9 and 10 over Takeo. That is, with respect to independent claim 9, Applicant submits that Takeo does not teach at least, “upgrading the software through the network and checking whether at least one failure occurs during the upgrade,” as recited in independent claim 9. The Examiner simply states that the “download is not local,” however there is no mention of any such upgrade of software through a network in the Abstract of Takeo. Therefore, the Examiner has not established that each and every limitation of independent claim 9 is satisfied by Takeo.

Applicant submits that dependent claim 10 is patentable at least by virtue of its dependency from independent claim 9. Further, with respect to claims 9 and 10, the Examiner obviously uses impermissible hindsight reasoning in concluding that the Abstract of Takeo satisfies the respective features set forth in each of claims 9 and 10, as there is no mention of a network device in Takeo’s Abstract.

RESPONSE UNDER 37 C.F.R. § 1.111
U. S. Application No. 10/046,912

ATTORNEY DOCKET NO. Q67327

§103(a) Rejections (Nelson/Kurihara) - Claim 4

The Examiner rejects claim 4 over Nelson and Kurihara for the reasons set forth on page 10 of the present Office Action. Applicant submits that claim 4 is patentable at least virtue by its dependencies from independent claim 1. Kurihara does not make up for the deficiencies of Nelson.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


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23373

CUSTOMER NUMBER

Date: June 23, 2006